

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

OSCAR BALLADARES,

Petitioner,

vs.

No. CIV 17-1152 JB/CG

RAYMOND SMITH,

Respondent.

MEMORANDUM OPINION AND ORDER OF DISMISSAL WITHOUT PREJUDICE

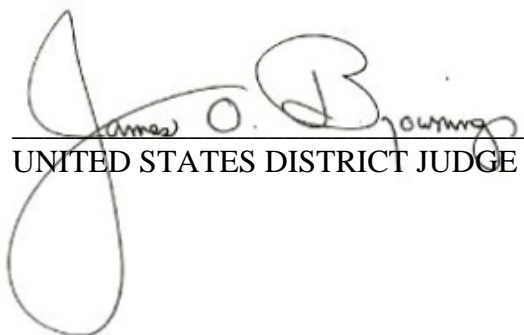
THIS MATTER comes before the Court on the Petitioner's Prisoner's Civil Rights Complaint, filed November 20, 2017 (Doc. 1)("Petition"), which the Court has construed as a petition for a writ of habeas corpus under 28 U.S.C. § 2241. See Memorandum Opinion and Order at 1, filed December 18, 2017 (Doc. 4)("MOO"). The Court referred this case to the Honorable Carmen E. Garza, Chief United States Magistrate Judge for the United States District Court for the District of New Mexico, to perform legal analysis and recommend an ultimate disposition. See Order of Reference Relating to Prisoner Cases at 1, filed November 21, 2017 (Doc. 3). On May 15, 2018, Chief Magistrate Judge Garza issued a Proposed Findings and Recommended Disposition, filed May 15, 2018 (Doc. 10)("PFRD"), which recommended dismissing the Petition without prejudice due to Plaintiff's Oscar Balladares' failure to exhaust available state remedies, see PFRD at 5.

The United States Postal Service returned the PFRD as undeliverable with the indication that Plaintiff Oscar Balladares is no longer at his address of record. See Letter, filed May 25, 2018 (Doc. 11)("Return to Sender, Not Deliverable as Addressed"). Under the District of New Mexico's local rules, it is Balladares' responsibility to advise the Court of any address change,

and Balladares must follow rules of procedure even though he is proceeding pro se. See Brandenburg v. Beaman, 632 F.2d 120, 122 (10th Cir. 1980)(“It is incumbent on litigants, even those proceeding pro se, to follow the federal rules of civil procedure. . . . The same is true of simple, nonburdensome local rules . . .”). Chief Magistrate Judge Garza ordered Balladares to show cause why the Court should not dismiss his Petition for his failure to comply with rules of procedure. See Order to Show Cause at 1, filed June 6, 2018 (Doc. 12).

Balladares has not notified the Clerk of the Court in writing of his current address, shown cause why the Court should not dismiss his Petition, or otherwise responded to the Order to Show Cause. If a plaintiff fails to pursue his case or comply with the Court’s orders, the Court may dismiss the case. See Fed. R. Civ. P. 41(b) (“If the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it.”); Olsen v. Mapes, 333 F.3d 1199, 1204 n.3 (10th Cir. 2003)(“Although the language of Rule 41(b) requires that the defendant file a motion to dismiss, the Rule has long been interpreted to permit courts to dismiss actions sua sponte for a plaintiff’s failure to prosecute or comply with the rules of civil procedure or the Court’s orders.”). Accordingly, because Balladares has not complied with the local rules or the Court’s orders, the Court dismisses his Petition without prejudice.

IT IS ORDERED that the Petitioner’s Prisoner’s Civil Rights Complaint, filed November 20, 2017 (Doc. 1), is dismissed without prejudice.


UNITED STATES DISTRICT JUDGE

Parties and counsel:

Oscar Balladares
Lea County Correctional Facility
Hobbs, New Mexico

Petitioner pro se

Jane Bernstein
New Mexico Attorney General
Albuquerque, New Mexico

Attorneys for the Respondent